HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 13346 OF 2006

DATED: 03.07.2006

Between:

T.S.Param Jyothi

… Petitioner

and

Dr K.Anil Kumar and others

…Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM
W.P.NO.13346 OF 2005

ORAL ORDER:

The writ petition is misconceived on law and has no foundational support in fact.

The first respondent obtained a loan from the fourth and fifth respondents for acquisition of property for nursing home and medical equipment and to meet the working capital requirements, in the year 2002. The petitioner and the respondents 2 and 3 are said to have stood as guarantors for repayment of the loans. The second respondent is the petitioner's wife. Admittedly, the first respondent defaulted in the repayment of the loan to the fifth respondent. Thereupon, on behalf of the fourth respondent, a notice dated 27.03.2006 was issued to the petitioner and his wife, the second respondent, intimating that the first respondent had defaulted in the payment of dues to the fourth respondent and therefore, the fourth respondent corporation is proceeding to advertise the guarantors property for sale
by a publication in Telugu daily dated 27.03.2006. The petitioner thereupon states to have contacted the first respondent who is claimed to have assured the petitioner that he would take care of the situation. Based on the said assurance the petitioner did

nothing further in the matter. Now the fourth respondent corporation is proceeding to finalize the sale transaction pursuant to the sale notification dated 27.03.2006. Hence the writ petition.

The petitioner contends that the respondents 4 and 5 are disentitled in law to proceed against the guarantors' property for recovery of loans due to the respondents 4 and 5 by the first respondent, without first proceeding against the first respondent-the principal debtor.

It is the settled principle in law that the liability of a guarantor is co-extensive and independent of the liability of the principal debtor. It is a joint and several liability. The petitioner does not state that the instrument of guarantee executed by the petitioner in favour of the respondents 4 and 5 excludes or postponed the liability of the petitioner as the guarantor till the respondents 4 and 5 recover the dues from the assets of the first respondent – the principal debtor.

In the circumstances, no mandamus can be issued to interdict the right of the respondents 4 and 5 to proceed and recover the dues from the petitioner, who is admittedly the guarantor to the debt of the first respondent. There are no merits. The writ petition is accordingly dismissed. No order as to costs.

GODA RAGHURAM, J

Date: 03.07.2006
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